

U.S. Department of Justice
Immigration and Naturalization Service

TESTIMONY

OF

PAUL VIRTUE
ACTING EXECUTIVE ASSOCIATE COMMISSIONER
OFFICE OF PROGRAMS

BEFORE

THE
HOUSE IMMIGRATION AND CLAIMS SUBCOMMITTEE

REGARDING

THE OVERSIGHT
ON THE IMPLEMENTATION OF TITLE III
OF
THE ILLEGAL IMMIGRATION REFORM
AND
IMMIGRANT RESPONSIBILITY ACT OF 1996

FEBRUARY 11, 1997
TUESDAY, 2PM
ROOM 2237 RAYBURN HOUSE OFFICE BUILDING

Mr. Chairman, Congressman Watt, and Members of the Subcommittee, we appreciate the opportunity to discuss with the Subcommittee the implementation of Title III of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and issues regarding detention and removal of criminal and illegal aliens. The Justice Department and the Immigration and Naturalization Service (INS), look forward during this session of the 105th Congress to building upon the relationship that we established during the 104th Congress and to working with you and the Members of the Subcommittee as we prepare to implement this landmark legislation in a fair and responsible manner. Accompanying me is David Martin, General Counsel of the Immigration and Naturalization Service. Mr. Martin is the lead official within INS for the agency priority regarding the removal of criminal aliens and he is prepared to address any questions you may have on that issue.

Background

As you know, the Administration has pursued a multi-year strategy to regain control of the nation's borders, to protect U.S. workers and to deter and correct illegal employment, to combat smuggling and alien-related crime, and to aggressively remove greater numbers of criminal and other deportable aliens. Many provisions of IIRIRA advance the Administration's strategy, and I am pleased to head the effort on behalf of the INS to implement IIRIRA.

As we continue our efforts to control our nation's borders, facilitate legal entry, remove the job magnet through worksite enforcement, increase the removal of deportable aliens, and improve the processing of benefit applications, the INS faces the massive challenge of to the Immigration and Nationality Act made under IIRIRA are some of the most significant changes to U.S. immigration law since 1952. The enactment of IIRIRA, in addition to the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Antiterrorism and Effective Death Penalty Act of 1996, makes this one of the most fascinating and challenging times at the INS.

Implementation of IIRIRA -- Process

Immediately after enactment of IIRIRA on September 30, 1996, Commissioner Meissner met with senior INS staff to set in motion the agency's organizational structure and process for

implementation of the new law. At this meeting, we divided the provisions of IIRIRA into five thematic areas and created, respectively, five working groups: (1) alien eligibility for benefits; (2) verification of alien status for benefits and employment; (3) Title III of IIRIRA and those portions of Title VI related to asylum; (4) operational issues including the deployment of border patrol and interior enforcement positions, delegation of immigration law enforcement authority to state and local authorities, and parole; and (5) programmatic and management issues including authorizations of appropriations, the automated entry/departure pilot, biometric border crossing cards, and the amendments to the grounds of inadmissibility and waiver provisions.

These teams serve as the foundation for implementing the new law and are responsible for promulgating regulations, drafting and issuance of field instructions and related forms, preparing the required reports, making changes to and drafting operating instructions, and helping to train agency employees to work with new systems and procedures. Approximately 75 INS employees are tasked to the work groups, including 20 INS employees detailed to Washington from field offices to enhance and complement the efforts to execute the new provisions of the law. We meet semiweekly with the Commissioner and senior staff to discuss practical and policy issues raised by provisions of IIRIRA. Members of the working groups hold frequent meetings with the Executive Office for Immigration Review (EOIR), the Department of State, the Department of Health and Human Services (HHS) and other agencies to discuss key issues and coordinate implementation of IIRIRA.

Over the next year, the working groups will seek to accomplish an uncommon and remarkable amount of work in order to implement the new provisions of the law. All six titles of this Act have provisions, some of which became effective upon enactment, that will require the promulgation of regulations before the end of the summer. Approximately 63 sections require new or amended regulations. Approximately 75 forms require some modification or consolidation. The Act requires 25 new reports to be submitted to Congress, including 16 that are required to be submitted periodically. Many of the sections require field instruction and guidance. Overall, we expect to issue some 25 regulations in accordance with the Service's reengineered regulatory clearance and program processes between the months of February and September 1997. To date, we have issued 10 policy wires and field instruction memoranda, all of which have been shared with staff of the House and Senate

Immigration Subcommittees soon after or simultaneous with internal INS issuance in an effort to keep you informed in a timely manner.

A significant part of the implementation effort is the training of our own employees and the education of members of the community about IIRIRA, its effects and implications. Over the next six months, we will educate more than 23,000 INS employees about the new law; this includes the training of more than 16,000 INS officers by April 1. However, we will not stop there. INS will continue to train our employees as additional regulations, forms, and procedures are developed and revised. In addition, we have provided a number of briefings for Congressional staff on various aspects of our implementation process and efforts. We have met with and briefed nongovernmental organizations and we are developing plans to provide information about IIRIRA's sweeping changes to other federal agencies, state and local law enforcement authorities, nongovernmental organizations, and members of the community.

Implementation of IIRIRA -- Policy

The subject of today's hearing, Title III of IIRIRA, made pervasive changes to the laws governing admission, inspection, removal and detention of aliens. The most significant changes include: a provision for the expedited removal of certain inadmissible aliens; the elimination of the "entry" doctrine as the line of demarcation between deportation and exclusion proceedings; the consolidation of exclusion and deportation into one proceeding; limitations on the availability of discretionary relief; strict requirements regarding the custody of criminal aliens and those with final orders of removal; and substantial limitations on the availability of judicial review.

Given the timing of this hearing, we would like to clarify that, in terms of the rulemaking process for implementation of Title III, we are limited to discussing the proposed rule. We believe that a discussion of any reaction to public comments would be premature and inappropriate, given the need for further review. Also, any comments offered or statements made during this hearing will not be considered a part of the rulemaking record and, unless they were received in writing prior to February 3, 1997, will not be considered in preparing the interim rule.

A notice of proposed rulemaking dealing with these issues as well as changes made in Title VI of

the Act relating to asylum processing was published in the Federal Register (at 62 FR 444) on January 3. The drafting of the proposed rule, which completely reforms the inspection and hearing processes, required daily coordination and careful cooperation between the INS and the EOIR well as the Department of Justice and the Office of Management and Budget. The proposed rule was published just over ninety days after the date of enactment.

Many provisions of Title III will become effective on April 1, 1997. The statute requires that regulations be promulgated thirty days in advance of that date. We expect to publish an interim rule on or about February 27 in order to meet the statutory deadline. The interim rule will be effective on April 1, 1997, and will afford 120 days for comments. Given the short period of time between the date of enactment and the April 1 effective date, we were limited to a 30-day comment period on the proposed rule. Nevertheless, we received 110 written comments during the comment period that ended last Monday, including those submitted by the House and Senate Immigration Subcommittees and by several members. We expect to have reviewed the comments and to submit a draft interim rule to the Department of Justice and OMB for review by the end of this week.

INS Removal Efforts

Mr. Chairman, let me take a moment to inform the committee of the results of our recent removal efforts. Over the last four years, Commissioner Meissner has brought renewed emphasis to the removal of criminal and other aliens unlawfully in the United States. With the strong support of the Congress and the Administration, INS has raised the number of removals to record levels three years in a row and worked to restore the integrity of the deportation process. This fiscal year will see an increase in detention space to over 12,000 beds and an unprecedented effort to remove at least 93,000 aliens ordered deported or excluded--a 37% increase over last year's total of 68,000. While much work remains to be done, we have begun to restore public confidence in the government's ability to enforce the nation's immigration laws. For the first time in many years, removal is an increasingly realistic consequence for those aliens who would violate the law.

The results of our efforts this fiscal year and last, Mr. Chairman, have been impressive. In fiscal year 1996, the INS removed a record 68,000 criminal and other deportable aliens--up 36% over the

results achieved in fiscal year 1995. Criminal alien removals increased by 13%, and non-criminal alien removals by 77%. Detention capacity rose to 9,500 beds by the fiscal year's end. This momentum has carried over into fiscal year 1997. In the first quarter, removals increased by 24% over the same period in fiscal year 1996. Ten thousand eight hundred fifty-four criminal aliens were deported--a 31% increase over the same period last fiscal year and 3,000 more than INS removed in an entire fiscal year just eight years ago. Over 60% of these criminal aliens were aggravated felons. INS detention space now stands at over 11,000 beds and will surpass 12,000 by October.

For the first time in its history, INS is also tracking and reporting the many removals of aliens that occur without a final order. Prior to this fiscal year, the removal figures that INS reported publicly included only those aliens INS removed pursuant to a final order of deportation or exclusion. They did not include the many deportable aliens who, after being apprehended by the INS in the interior of the country, agree to return to their home country without formal immigration proceedings. While these aliens are not formally ordered deported, they are deportable, and their removal from the United States represents a significant accomplishment by the INS. In the first three months of this fiscal year, INS recorded 20,000 of these removals, and we estimate that there will be roughly 100,000 by fiscal year's end--bringing the total number of estimated removals from the United States in fiscal year 1997 to nearly 200,000.

While our accomplishments have been significant, Mr. Chairman, further effort is needed to create a truly efficient, credible, and durable removal process. The number of aliens unlawfully in the United States remains in the millions, and many aliens ordered deported are not removed due to a lack of resources. The passage of IIRIRA brought increased enforcement powers which should strengthen our removal efforts in the long term, but it also created many immediate challenges for the Service. Sweeping changes were made to the removal process, and the transition costs will be significant. Legal challenges must be addressed, new procedures adopted and implemented, and thousands of Service personnel trained. I am confident, however, that we will meet these immediate challenges and, working with the Congress, advance the government's efforts to deter illegal migration to this country.

Chairman Smith and Members of the Subcommittee, we appreciate the continued support of the

Subcommittee for the initiatives taken by the Administration. Already during this session of Congress, we have provided several briefings to and met with the staff of the Immigration Subcommittee, and we look forward to continuing to work with you, Members of the Subcommittee, and your staff in our administration of the immigration laws.

I am pleased to answer any questions that you or other Members of the Subcommittee may have.